

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAM SMITH, III,

Plaintiff,

-vs-

LYNN M. DAVIDSON, ET AL.,

Defendants.

No. 10-13898

District Judge Mark A. Goldsmith

Magistrate Judge R. Steven Whalen

ORDER

Before the Court is Plaintiff's Motion to (1) Exclude Defendant Wojnarowicz's Exhibits, (2) Allow Time for Discovery Before Ruling on Defendant's Motion; and (3) Compel Defendant to Comply with Plaintiff's Request for Discovery [Doc. #60].

Plaintiff seeks to exclude certain exhibits that Defendant Wojnarowicz submitted with her reply brief [Doc. #58] in support of her motion to dismiss [Doc. #55]. On January 29, 2014, I issued a Report and Recommendation that recommended granting the Defendant's motion pursuant to Fed.R.Civ.P. 12(b)(6). The exhibits attached to Defendant's response were the very documents cited and relied upon by the Plaintiff in his response brief [Doc. #57], so his objections are not well-taken. In any event, however, I did not rely on those exhibits in formulating my recommendation.

Also, Plaintiff requests discovery in the event that Defendant's motion were to be construed as a summary judgment motion. It was not; rather, my recommendation was based on the application of Rule 12(b)(6) to the allegations in the complaint.

Accordingly, Plaintiff's motion [Doc. #60] is DENIED WITHOUT PREJUDICE. If, after review by the District Judge, Plaintiff survives Defendant's motion to dismiss, he may renew his request for discovery.

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et al

IT IS SO ORDERED.

Dated: January 30, 2014

s/ R. Steven Whalen
R. STEVEN WHALEN
UNITED STATES MAGISTRATE JUDGE

I hereby certify that a copy of this Order was sent to parties of record on January 30, 2014, electronically and/or by U.S. mail.

s/Michael Williams
Case Manager for the
Honorable R. Steven Whalen